

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION IV

CACR06-777

June 27, 2007

KERRY DEON VINCENT

APPELLANT

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT
[NO. CR-05-141-3]

V.

HON. ROBERT BYNUM GIBSON,
JR., JUDGE

STATE OF ARKANSAS

APPELLEE

MOTION TO WITHDRAW
DENIED; REBRIEFING ORDERED

The appellant in this criminal case was tried by a jury and convicted of commercial burglary, attempted theft of property, and first-degree criminal mischief. His attorney, Ms. Sandra C. Bradshaw, has filed a motion to be relieved as counsel, alleging that there are no meritorious issues presented in this appeal. We deny the motion and order rebriefing.

Our standard in determining whether to relieve an attorney from a non-meritorious appeal is not whether counsel thinks the trial court committed no reversible error, but rather whether the points to be raised on appeal would be “wholly frivolous.” *Anders v. California*, 386 U.S. 738 (1967); *Ofochebe v. State*, 40 Ark. App. 92, 844 S.W.2d 373 (1992). To be relieved on this basis, an attorney must comply with Rule 4-3(j)(1) of the Rules of the Arkansas Supreme Court and Court of Appeals, which provides that:

Any motion by counsel for a defendant in a criminal or a juvenile delinquency case for permission to withdraw made after notice of appeal has been given shall be addressed to the Court, shall contain a statement of the reason for the request and shall be served upon the defendant personally by

first-class mail. A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and Addendum. The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The abstract and Addendum of the brief shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the trial court.

Appellant's attorney failed to comply with this rule. Her abstract contains five objections, only one of which is discussed in the argument section of her brief. Furthermore, our inspection of the transcript revealed that there were at least thirteen objections, perhaps more, that were decided adversely to appellant but which were neither abstracted nor discussed by counsel. Because of these deficiencies, we order that the case be rebriefed in accordance with Rule 4-3(j) within thirty days. *See Skiver v. State*, 326 Ark. 914, 935 S.W.2d 248 (1996).

Motion to withdraw denied; rebriefing ordered.

ROBBINS and HEFFLEY, JJ., agree.